
IN THE MATTER OF	:	Before the School
	:	Ethics Commission
	:	
FRED LESTER,	:	Docket No.: C17-97
<i>HILLSIDE TOWNSHIP BOARD OF</i>	:	
<i>EDUCATION,</i>	:	
<i>UNION COUNTY</i>	:	DECISION
	:	

PROCEDURAL HISTORY

This matter arises from a claim brought by Dennis S. Kobitz against Fred Lester, a member of the Hillside Township Board of Education. Mr. Kobitz alleges that Mr. Lester violated the School Ethics Act, N.J.S.A. 18A:12-24(b) and (e) when he was sworn in by a friend who is an attorney for Hill Wallack, a law firm that Mr. Kobitz alleges represented the board at a meeting without the knowledge of the other board members. He also alleges that Mr. Lester had the board go into private at the meeting to discuss the attorney. Mr. Kobitz further alleges that Mr. Lester voted to put on the agenda a raise for the poll workers while his wife is a poll worker. He alleges that Mr. Lester originally voted for a raise for the poll workers and then changed his vote to abstain. Mr. Kobitz further alleges that Mr. Lester took contributions from the attorney and other vendors for his campaign to run for re-election. He also alleges that Mr. Lester then gave them work. Mr. Kobitz further alleges that Mr. Lester, in his capacity as board president, did not properly advertise the reorganization meeting. Mr. Kobitz filed his complaint on June 2, 1997.

Mr. Lester filed his answer on July 17, 1997, in which he denied violating any provision of the School Ethics Act. Mr. Lester admits being sworn in by a friend who was an attorney at the law firm of Hill Wallack, however he claims that this was not inappropriate. Mr. Lester denies that the law firm of Hill Wallack represented the board without the knowledge of the other board members and he responds that that law firm had already represented the board as its labor attorney. He admits discussing the solicitor position in private, but responds that any action would have to be taken in public. Mr. Lester admits that his wife is a poll worker and admits that he initially voted to raise the pay for the poll workers. However, upon advice from the acting board attorney he changed that vote to abstain. Mr. Lester neither admits nor denies voting to have a raise for the poll workers put on the board's agenda. Mr. Lester denies taking contributions from a vendor or attorney with the intent to give those vendors or attorneys work. He responds that he returned the contribution from the attorney before any contract was awarded. Mr. Lester further denies that the reorganization meeting was not properly advertised.

The Commission invited the parties to attend the Commission's meeting on February 24, 1998 and present witnesses and testimony to aid in the Commission's investigation. Both parties appeared. The Commission tabled the matter at its public meeting on February 24, 1998, and issued this decision at its meeting of March 30, 1998.

FACTS

On the basis of the pleadings, testimony and documents submitted, the Commission finds the following facts to be undisputed. Respondent is a member of the Hillside Township Board of Education. Complainant is a citizen of Hillside Township.

Respondent was sworn in by a friend who was an attorney at the law firm of Hill Wallack. The law firm of Hill Wallack was appointed as Hillside Board of Education labor attorney and board solicitor on a 30 day interim basis at the April 28, 1997 organization meeting by a vote of 6 to 1 with 2 absent. At the June 2, 1997 board meeting the firm of Hill Wallack was appointed as the board attorney by a vote of 6 to 1 with 1 absent. Mr. Lester's wife is a poll worker and Mr. Lester initially voted to raise the pay for the poll workers at the April 30, 1997 board meeting and subsequently changed that affirmative vote to an abstention after advice from the board solicitor. Upon a suggestion from the board of elections, the issue of a pay raise for the poll workers was put on the board agenda. Mr. Lester received contributions from attorneys and returned those contributions.

ANALYSIS

Complainant alleges that respondent violated N.J.S.A. 18A:12-24(b) by being sworn in by a friend who is an attorney for Hill Wallack and by allowing that firm to represent the board at a meeting without the board's knowledge. Complainant further alleges a violation because the board went into private to discuss the attorney.

N.J.S.A. 18A:12-24(b) sets forth:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

On the facts set forth above, the Commission cannot find a violation of N.J.S.A. 18A:12-24(b). The act of being sworn in by a friend is not a violation, there is no unwarranted privilege that is secured or no advantage for the respondent in being sworn in by a friend. The facts show that the board had knowledge of Hill Wallack's representation of the board as the board voted for such representation. Discussing the board attorney position in private is also not a violation of N.J.S.A. 18A:12-24(b). All pertinent actions with reference to the board's retention of Hill Wallack was done in public as noted by the votes to hire the firm.

Complainant alleges that respondent violated N.J.S.A. 18A:12-24(e) by voting to put on the agenda a pay raise for the poll workers while his wife is a poll worker. He also alleges that respondent originally voted for a raise for the poll workers and then changed his vote to abstain. He further alleges that respondent took contributions from attorneys and other vendors for his campaign to run for re-election and then gave them work.

N.J.S.A. 18A:12-24(e) sets forth:

No school official or member of his immediate family, or business organization in which he has an interest, shall solicit or accept any gift, favor, loan, political contribution, service, promise of future employment, or other thing of value based upon an understanding that the gift, favor, loan, contribution, service, promise, or thing of value was given or offered for the purpose of influencing him, directly or indirectly, in the discharge of his official duties. This provision shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, if the school official has no knowledge or reason to believe that the campaign contribution, if accepted, was given with the intent to influence the school official in the discharge of his official duties;

On the facts set forth above, the Commission cannot find a violation of N.J.S.A. 18A:12-24(e). The respondent originally voted for a pay raise for the poll workers which included his wife, however after advice from the board attorney he abstained from voting. His abstention does not violate N.J.S.A. 18A:12-24(e). The facts also show that the respondent did not vote to put a pay raise for the poll workers on the agenda, that item was placed on the agenda at the request of the board of elections.

While respondent admits accepting political contributions from attorneys, he also states that he believes that the contributions were not given with the intent of obtaining employment. In any case, he returned the contributions. The Commission finds that respondent did not violate of N.J.S.A. 18A:12-24(e) by accepting and returning contributions from attorneys. However, the Commission cautions the respondent that although no violation was proven on the facts as presented, there are always precautions that should be taken by a board member and the Commission hopes that in the future the respondent will be more cautious in his acceptance of campaign contributions.

Complainant alleges that the respondent violated the School Ethics Act because he did not properly advertise the reorganization meeting. This conduct of the respondent does not fall within the purview of the School Ethics Act and is not in violation of the Act. The conduct falls under the Open Public Meetings Act. The Commission will forward a copy of this decision along with the complaint and answer to the Union County Prosecutors Office for their review, as the county prosecutors office has the authority to investigate alleged violations of the Open Public Meetings Act.

DECISION

For the foregoing reasons, the Commission finds no probable cause to credit the allegations in the complaint that respondent violated N.J.S.A. 18A: 12-24(b) and (e). Therefore, it dismisses the charges against him.

The decision dismissing the complaint is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division.

Paul C. Garbarini
Chairperson

Resolution Adopting Decision -- C17-97

Whereas, the School Ethics Commission has considered the pleadings filed by the parties and the documents submitted in support thereof ; and

Whereas, the Commission has found no probable cause to credit the allegations that respondent violated the School Ethics Act, N.J.S.A. 18A:12-24(b) and (e) and therefore dismisses the charges against him; and

Whereas the Commission has reviewed the proposed decision of its staff; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution
was duly adopted by the School
Ethics Commission at its public meeting
on March 30, 1997.

Mary E. Torres
Acting Director